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**FAX**

Date November 25, 2005

To Examiner Ming Chow

Of PTO Group Art Unit 2645

Fax 571-273-8300

From William H. Mandir

Subject NOTICE OF APPEAL//PRE-APPEAL BRIEF REQUEST FOR REVIEW

Our Ref Q63730 Appln No 09/843,771

Conf No 1088 Inventors Gideon FOSTICK

Pages 9 (including cover sheet)

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This fax filing includes:

1. This cover sheet
2. Pre-Appeal Brief Request for Review (PTO Form and Statement)
3. Notice of Appeal (in duplicate)

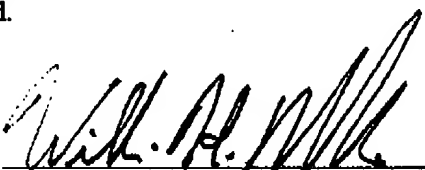
#### CERTIFICATION OF FACSIMILE TRANSMISSION

Sir:

I hereby certify that the above identified correspondence is being facsimile transmitted to Examiner Ming Chow at the Patent and Trademark Office on November 25, 2005 at 571-273-8300.

Respectfully submitted,

  
William H. Mandir

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Modified PTO/SB/33 (10-05)	
		Docket Number	
		Q63730	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number		Filed
	09/843,771		April 30, 2001
	First Named Inventor		
	Gideon FOSTICK		
	Art Unit	Examiner	
	2645	Ming Chow	
WASHINGTON OFFICE 23373 CUSTOMER NUMBER			
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal			
The review is requested for the reasons(s) stated on the attached sheet(s).			
Note: No more than five (5) pages may be provided.			
<input checked="" type="checkbox"/> I am an attorney or agent of record.			
Registration number 32,156			
		Signature	
		William H. Mandir	
		Typed or printed name	
		(202) 293-7060	
		Telephone number	
		November 25, 2005	
		Date	

**RECEIVED  
CENTRAL FAX CENTER****NOV 25 2005****PATENT APPLICATION****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Docket No: Q63730

Gideon FOSTICK

Appln. No.: 09/843,771

Group Art Unit: 2645

Confirmation No.: 1088

Examiner: Ming Chow

Filed: April 30, 2001

For: NON-VOICE COMPLETION OF VOICE CALLS

**PRE-APPEAL BRIEF REQUEST FOR REVIEW****MAIL STOP AF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the new Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated August 25, 2005, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

**Claim Rejections Under 35 U.S.C. § 103**

Claims 6, 9 and 11-15 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Agraharam et al. (US 6,483,899) in view of Parson et al. (US 2002/0085701). Claims 6-9 and 11-15 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Davidson et al. (US 6,775,360) in view of Bannister et al. (US 5,943,399).

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***The Claimed Invention***

The claimed invention is directed to a system for enabling a calling party to use voice narration to send a text message to a wireless communication device. The system includes an Automatic Voice Recognition Server for converting a voice message to a text message, and an Interactive Voice Response System for selecting a pre-prepared message from a plurality of available prep-prepared messages that are pre-programmed by the called party. The text message that is provided to the wireless communication device includes the selected pre-prepared and the converted text message.

It is respectfully submitted that the pending claims recite a *particular* text message that is provided to a wireless communication device, and that this text or non-voice message is not suggested by the prior art taken alone, or in any reasonable combination.

***The Prior Art Rejections Under 35 USC 103***

With respect to the combination of Agraharam and Parsons, Agraharam discloses a voice messaging system in which a network 120 converts a voice message to a text message. *See* Agraham at 2:28-32. Agraharam, however, does not disclose an interactive voice recognition system in which a pre-prepared message is selected from a plurality of available pre-prepared messages or that a call answering service provides a text message that includes both the pre-prepared message and a converted text message portion (converted from a voice message).

Parson discloses an interactive voice response system in which a caller "can leave a text message for the user." The incoming caller selects from predetermined messages that "can be appended with numeric information." *See* Parsons at para. 90. However, Parsons does not disclose that the text message includes both the pre-prepared message and a converted text

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message portion that is converted from a voice message. Instead, *numeric information* (which can be entered through a keypad) is added to the predetermined messages.

Referring to pages 4-5 of the final Office Action dated August 25, 2005, the Examiner supports the combination of Agraharam et al and Parson et al stating simply that both references disclose “systems set up in a message system environment.” (emphasis in the original). The Examiner goes on to state: “It is a perfect objective of motivation to modify Agraharam et al in view of Parson et al in order to support the conveniences of using a flexible means to select a pre-programmed message”. (emphasis in original). Appellant respectfully submits that these reasons are not suggested by the prior art references themselves, but rather are gleaned from the invention itself. In other words, the Examiner is improperly using hindsight reconstruction to arrive at the claimed invention.

Consequently, it is respectfully submitted that the Examiner has failed to show a *prima facie* case of obviousness. Specifically, the Examiner has failed to explain why one would select *both* a preprogrammed text or non-voice message as well as a converted text or non-voice message, as recited in each of the independent claims. The Examiner has arguably found references that teach each feature in isolation, but the Examiner has failed to articulate any reasonable basis as to why one skilled in the art would have combined these features. That is, why one skilled in the art would have combined both (1) a voice message converted to a text or non-voice message and (2) a preprogrammed text or non-voice message.

With respect to the combination of Davidson and Bannister, Davidson discloses system for providing an e-mail message that includes a text message, which is based on voice data, and

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voice data as a wave file. *See* Davidson at 5:18-53. However, Davidson does not disclose that the text message includes converted text, which has been converted from a voice message.

The background of Bannister discusses a telecommunications network in an interactive voice response (IVR) system in which predefined short messages can be sent by a caller. *See* Bannister at 1:23-30. Moreover, Bannister discloses a telecommunications system in which the calling party can prepare and send to the called party a short text message with several possible answers. *See* Bannister at, for example, 8:20-48. The called party can then respond to the message by pressing a digit on the keypad corresponding to the appropriate answer. *See* Bannister at 8:20-49-63.

The Examiner asserts that it would have been obvious to modify Davidson to have called party pre-programmed messages. However, again the Examiner has not identified *objective evidence* of any motivation or suggestion in either Davidson or Bannister so that a text message includes both a pre-prepared message and a converted text message portion that is converted from a voice message.

In addition, Bannister's messages are not programmed by the called party, but are instead programmed by the calling party, and there is no suggestion to modify Bannister's system so that it is a called part that programs the pre-prepared messages

In view of the foregoing, reconsideration and withdrawal of the 103 rejections of record are respectfully requested.

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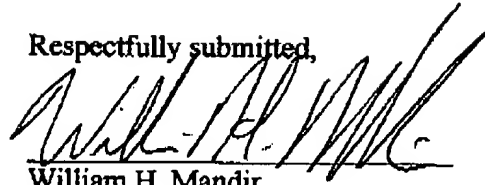
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Respectfully submitted,



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Date: November 25, 2005